

BOARD OF APPEALS  
for  
MONTGOMERY COUNTY

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
(240) 777-6600

**Case No. A-5736**

**PETITION OF MARTY AND JOANNE SEVERE**

(Hearing held April 3, 2002)

**OPINION OF THE BOARD**

(Effective date of Opinion, May 9, 2002)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59 Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.323(a). The petitioners propose to construct a one-story addition that requires a nine (9) foot variance as it is within thirty-one (31) feet of the front lot line. The required setback is forty (40) feet.

Richard Foster, an architect, represented the petitioners at the public hearing.

The subject property is Lot 2, Block 3, located at 11629 Danville Drive, Rockville, Maryland, in the R-200 Zone (Tax Account No. 00087376).

Decision of the Board: Requested variance **granted**.

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioners propose to construct an 18 x 14.3 foot one-story addition in the northern section of the property.
2. Mr. Foster testified that the property is a shallow, wedge-shaped lot, located at the intersection Danville Drive and Danville Court. Mr. Foster testified that the front yard of the property wraps around the lot and that the property must meet a 40-foot setback for all of those areas on three sides.
3. Mr. Foster testified that the address for the petitioners' house is Danville Drive and that no other houses face Danville Court until four houses past the intersection. See, Exhibit No. 8. Mr. Foster testified that the property has a single side yard located at the northwest section of the property, and that the lot does not have a second side yard or a rear yard, as would be typical for most residential properties. See, Exhibits 4(e)-(g).
4. Mr. Foster testified that the proposed construction would not be visible from the front of the lot and that the addition would be tucked into the rear of the house behind the garage.
5. The petitioners testified that they have spoken with their neighbors and that their neighbors support the variance request.

**FINDINGS OF THE BOARD**

Based on the petitioners' binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The property is a unique, wedge-shaped lot. Danville Drive and Danville Court surround the property on three sides. The Board notes that a 40-foot setback wraps around the lot and that the lot has three front yards. The Board finds that the lot's exceptional shape and shallowness are conditions that are peculiar to the property and that the strict application of the zoning regulations would result in practical difficulties.

- (b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the requested variance for the construction of a one-story addition is the minimum reasonably necessary.

- (c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The proposed construction will continue the residential use of the property and the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The record contains no testimony or correspondence in opposition to the variance request. The Board finds that the proposed construction will not materially impact the view for the neighboring properties as it will be located behind the existing garage. The Board further finds that the variance will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of nine (9) feet from the required forty (40) foot front lot line setback for the construction of a one-story addition is granted subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, and the testimony of their witnesses, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4(a) through 4(d) and 5(a) through 5(c).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Allison Ishihara Fultz, seconded by Angelo M. Caputo, with Donna L. Barron, Louise L. Mayer and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution.

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 9th day of May, 2002

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Katherine Freeman  
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.